

# Should the Indian States Enter the Federation?

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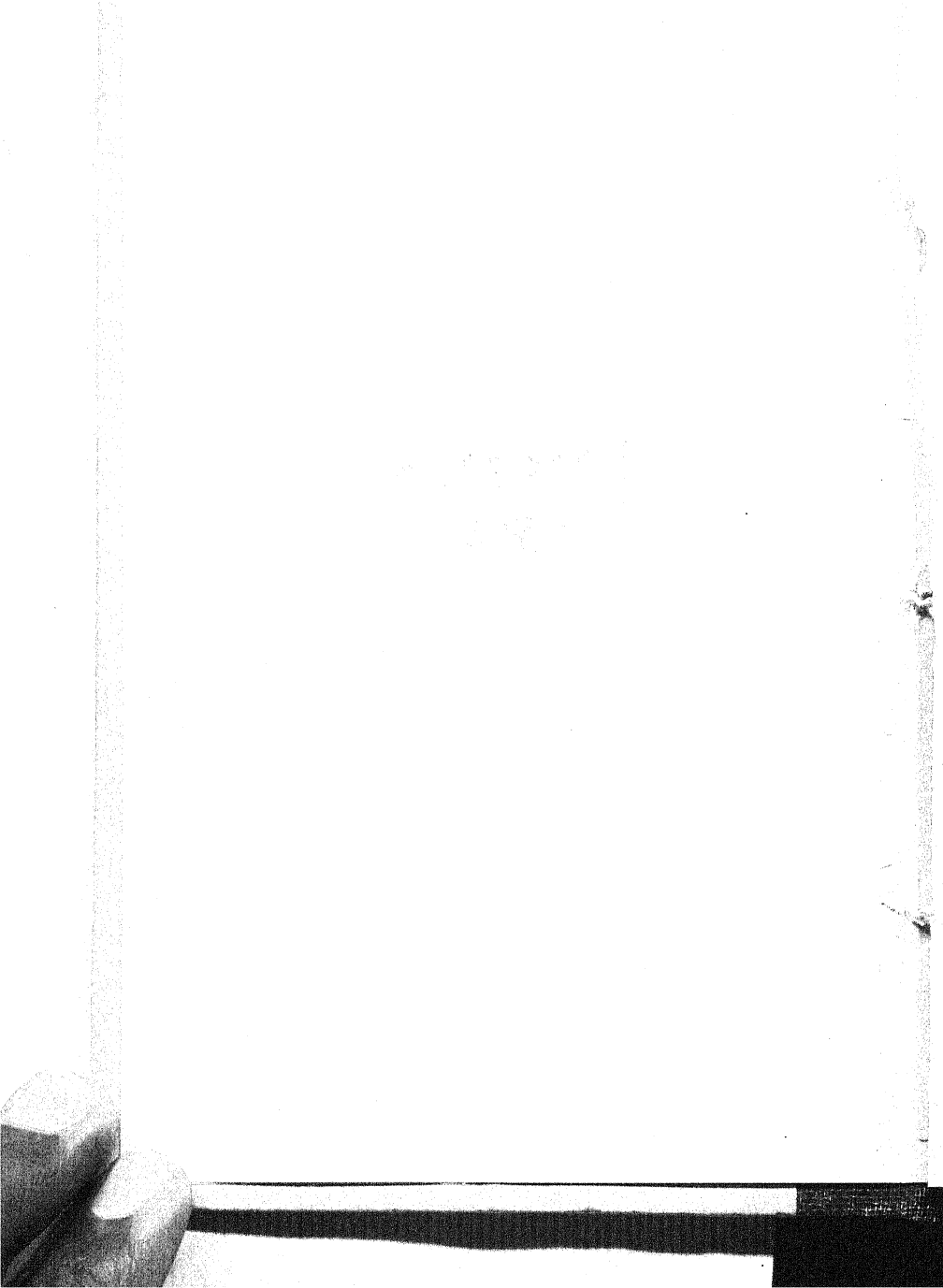


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## FOREWORD

MR. B. S. PUTTASWAMY has brought out a book of topical interest at the psychological moment of India's destiny. He has discussed the question whether Indian States should enter the Federation with fairness and impartiality and has given his opinion with frankness and liberality. He is dominated by one great idea, the love of India, the Motherland, and his conclusions tempered by this idea fall into their proper places. Mr. Puttaswamy went to England at the time of the Second Round Table Conference and studied the question when it was being hotly debated in London. His presentation of the case of Indian States shows breadth of vision and imagination, besides a scholarly grasp of the facts and realities of the situation. The conclusions he has reached are such as to commend themselves to all patriotic subjects of Indian States. His masterly exposition of Federal Finance puts the case very fairly and deserves careful study. I am glad he advocates the 'Election' of the delegates from the Indian States, a sentiment which will find an echo in the heart of every subject of an Indian State. But this must be subject to a general limitation that the Ruler of an Indian State should for

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obvious reasons be free to nominate, if he so chooses, a certain percentage of the members allotted to his State. The question of immediate interest to us in Mysore is whether Mysore should enter the Federation. The consensus of opinion in Mysore is that the State, being a model of advanced administration, should set an example in this respect. The question of a heavy subsidy which the State has paid since 1799 acts as a dead-weight in its determination to lead in the matter of Federation and it is to be hoped that the British Government will remove this great burden which, as the author says, is also a source of inferiority complex which the people of Mysore feel keenly. It would be a graceful act, if, in this year of His Majesty the King's Silver Jubilee, this subsidy is done away with and the State allowed to enter the Federation on terms of equality with other Indian States.

Mr. Puttaswamy's book is a valuable contribution to the study of the question and I hope it will be perused with pleasure and profit by the politically-minded both in the States and British India.

K. P. PUTTANNA CHETTY.

20 May, 1935.



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*It has not been possible to obtain direct access to some of the works cited. In such cases the extracts have been culled from secondary sources.*

# I

## THE EVOLUTION OF A FEDERAL SCHEME FOR INDIA



# I

## THE EVOLUTION OF A FEDERAL SCHEME FOR INDIA

THE problem of joining the proposed All-India Federation has been exercising the minds alike of the subjects and the rulers of the Indian States for some time past. The dramatic announcement of the Princes, signifying their assent to join in a proper scheme of all-India federation is 'the most momentous utterance ever made in India's chequered history.' The Princes may, by this act, justifiably claim that they have brought the vast Indian problem nearer solution than ever before. Pessimists are not wanting who a few years ago would have denounced the present proposals with the Indian States in the picture as a political heresy. But it is a truism to say that the heresies of today become the orthodoxies of tomorrow. The Princes have endorsed the idea of Federation, but their entry is conditional on the fulfilment of certain essential requisites. It is the purpose of this pamphlet to examine *inter alia* how far their claims are safeguarded under the proposed reforms and to what extent the reform proposals mark the political advance of India in general.

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Prior to the Round Table Conference in 1930, the question of a Federation of India, including the Indian States, was looked upon merely as a distant objective and a remote possibility. To some people in British India, a union of Provinces under a democratic system of Government with a congeries of Indian States, possessing various degrees of autonomy and governed under different shades of autocracy, was a thing almost inconceivable, and such a union was regarded even by persons like Lord Meston as a mixture of oil with water. A few others considered that it was most unlikely that the Princes would be willing to accept such a scheme, and even if they consented they thought that the task of evolving a scheme satisfying both these disparate units, in matters of financial adjustment and of representation in the Federal Scheme, not only between the States and Provinces but also among the States *inter se*, was by no means within the bounds of human achievement.

Opinions of this kind are evidently the result of magnifying on the one hand the difficulties that exist in the path of federation, and under-rating on the other the forces of unification that have been at work for a very long time, and ignoring the trend of events in recent times, which points unmistakably to the inevitable destination, namely an All-India Federation.

Geographically India is one unit. The all-pervading Indian culture has been a great factor ever reminding us that fundamentally India is one unit, in spite of its immense diversity. The railways, posts,

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telegraphs, coinage, currency and exchange have knit together the different parts of India in such a way that the various units have now become so inter-related and so inter-dependent that an economic unity of India has been more than achieved. The great Indian Nationalist Movement—thanks to western education, for it must be said to its credit that the origin of the nationalist movement is to be traced to it—has not failed to penetrate into Indian States and draw them into the vortex of its current. The sense of political isolation which we, within the States, had been feeling has been disappearing with great rapidity. It is no longer possible for the Indian States to live in a pool of placid contentment. To add to all this the economic ties that exist between the States and the Government of India are every day proving the need for a closer contact than ever before. Responsible persons, both within and outside the States, have realised that the lack of proper arrangements for the satisfactory formulation of economic policies affecting vitally the interests of India as a whole must lead to most undesirable results. To quote the words of Sir Mirza M. Ismail, 'India's problems, as affecting both British India and the States, can best be solved by a federation involving both political and economic unity. It is a delusion to suppose that the progress of the one or the other would be furthered by a policy of isolation. India is one in fate as in connections. That unity of India towards which destiny and the most strenuous human effort have

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been working is essential to the interests of both these great sections and of every sub-section. For any State or Province temporary isolation is possible, but there can be no isolation from the consequence, disastrous equally to the whole and to the unit. Less than ever can we now isolate our problems. Man's activities in every sphere react upon one another more rapidly, more directly and more intimately than in any previous age.<sup>1</sup> It is these considerations that must have influenced the Indian States to express themselves at the Round Table Conference in favour of a Federal Constitution for the whole of India.

The announcement by the Ruling Princes of their willingness to participate in the Federal Scheme appeared to some people so sudden and unexpected that it excited suspicion in their minds. Criticisms such as these: That the Indian States being an 'ideal make-weight'<sup>2</sup> have been brought in to redress the balance of power against democracy<sup>3</sup> and that the Princes have been playing into the hands of British statesmen, who are trying to postpone the grant of

<sup>1</sup> Concluding remarks of the Dewan, Sir Mirza M. Ismail, to the Mysore Representative Assembly (Birthday Session, 1932).

<sup>2</sup> H. N. Brailsford, *Property or Peace*, p. 211.

<sup>3</sup> The idea of an All-India Federation, including the Native States, was brought forward for immediate adoption from the British side because the British Government hoped to be able to use the Native Princes as a loyalist counterpoise at the centre against the Nationalists.—G. D. H. and M. I. Cole, *A Guide to Modern Politics*, p. 307.



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Dominion Status to India, are now being levelled against the Princes, with no justification.

The real object for which the Indian States have declared themselves in favour of the Federal idea cannot be properly understood unless their exact position in relation to the Government of India is borne in mind.

A brief survey of the policy pursued so far by the Government of India towards the Indian States will clearly show that the Ruling Princes have, in the words of the Marquis of Salisbury,<sup>1</sup> 'a just complaint against the treatment which they have often received from the Government of India.' Nor was the noble Lord less correct when he said that 'we are satisfied that the questions in which the States had substantial interest have often been settled by the Government of India without consulting or even informing them of their intention.'

Even as far back as 1852 the uncalled-for and unwarranted interference by the Government of India with the internal administration of the States was so much that Sir George Campbell wrote that 'whatever the original stipulation, there is, in fact, almost no State with the internal affairs of which we have not had something to do. There is no uniform system and it is almost impossible to give any definite explanation of what things we do meddle with and what we do not.' But soon after the suppression of the Indian

<sup>1</sup> *Report of the Joint Committee on Indian Constitutional Reform, 1933-34, Vol. I, Part 2, p. 298.*

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Mutiny and the transfer of India to the Crown from the East India Company, the policy of the Government of India became more aggressive. The differential treatment which was being shown to independent States and dependent States was given up and all States were alike looked upon as feudatory States and the existence of a right of intervention in the internal administration of the State was publicly asserted, in addition to the terms of the treaty. Under the new theory of paramountcy the powers of the British authority became all comprehensive.

Apart from this kind of needless intervention in the internal administration of the States, the Central Legislature of British India has been dealing with matters of All-India concern in such a way that the Indian States are affected by far-reaching consequences. The introduction of maritime customs, the various tariff measures, the salt monopoly, the Indian Currency Act of 1927, etc., practically amount to a taxation of the States. In the matter of shaping the economic policies the States have had no voice. At best they can only lodge a complaint with the Viceroy who we know is appointed, at the same time, as representative of British Indian interests. Moreover, whenever there has arisen a conflict between the interests of an Indian State and those of the Government of India, the latter has acted as the sole judge of the justiciable matter, forgetting conveniently for a while that it was itself one of the contesting parties. Reviewing this anomalous position the Montague-Chelmsford Report

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has said that, 'In the past, it has certainly occasionally happened that the States were vitally affected by decisions taken without reference to them; and yet no machinery for such collective consultation with them has hitherto existed. It seems to us that they have a clear right to ask for it in the future.'<sup>1</sup> The Indian Statutory Commission of 1930 also made a similar observation. With a view to remove this drawback, the Statutory Commission has recommended the setting up of a Greater India Council.<sup>2</sup> But it should be noted that the decisions of this body would have been also merely advisory and have had no binding force whatsoever.

If the high-handed and arbitrary dealings of the Government of India have been a source of considerable anxiety to the Ruling Princes, equally prejudicial to their continued existence has been the rise of the tide of Indian democracy. There has been a school of thought in British India which strongly holds that the Indian States are an anachronism, and that 'the only way of mending them is by ending them.'<sup>3</sup> They do not hesitate to suggest the adoption of coercive methods to this end and as they themselves are not in a position to do so they want the British Government to take the necessary action.

<sup>1</sup> *The Montague-Chelmsford Report*, para 311, p. 198.

<sup>2</sup> *Simon Commission Report*, Vol. II, para 237.

<sup>3</sup> Sir Tej Bahadur Sapru refers to the existence of this school of thought in his Foreword to Prof. G. N. Singh's *Indian States and British India*.

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Situated on the horns of this dilemma, the only safe course for the Indian Princes was to support the federal idea at the Round Table Conference. But it must be remembered that this idea of a federation was by no means a novel one that suggested itself to the minds of the Ruling Princes on the spur of the moment. The star of Indian Federation had risen long ago in the political firmament of India. But the contending political clouds and conflicting interests had obscured it. As was referred to before, there have been indications in the Montague-Chelmsford Report, of a federation as a natural sequel to the growth of political development in India. The Simon Commission foreshadowed an All-India Federation as the ultimate stage in the political evolution of the Indian Constitution. His Highness the Maharaja of Bikanir, in 1928, said that the ultimate solution and possibly the only salvation for Indian problems lay only in the setting up of 'some kind of federation.' His Highness the Maharaja of Alwar more forcibly said, 'my goal is the "United States of India" where every Province, every State working out its own destiny in accordance with its own environment, its traditions, history and religion, will combine together for higher and imperial purposes, each subscribing its little quota of knowledge and experience in a labour of love freely given for a noble and higher cause.'

From the above unequivocal expressions of views it becomes clear that the Princes had not fallen short

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in patriotic feelings, nor was their attitude inimical to the legitimate aspirations of British India.

While agreeing in the main to enter an All-India Federal Scheme, the States, however, have mentioned certain conditions as being essential before they joined it. They declared that their treaty rights and sovereignty should be adequately safeguarded in the Constitution Act; that outside the federal jurisdiction their relationship should be with the Crown; and that an amicable financial adjustment should be arrived at between the Provinces and the States. In addition to this general outline on which alone any framework of a constitution would be acceptable to the States, the Princes have also contended that, in view of the fact that it was hardly possible at that time to forecast in what form the Government of India Bill would be passed into a Statute by Parliament, they would make up their mind to enter the Federation only after they had seen the picture of Federation in full.

This conditional offer was accepted by many members of the Round Table Conference for different reasons. The British Indian delegation welcomed this offer of the Princes as they saw that the political unity of India, which had so far remained only as an ideal, would soon become an accomplished fact. Secondly, they realised that central responsibility of whatever shade and degree would meet with stout resistance from British Conservative groups, if the Princes had remained outside. The State subjects unanimously supported the federal idea as they hoped that an

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intimate political contact with democratic British Indian Provinces would inevitably lead to a uniform levelling up of constitutional methods of Government within the States. The British statesmen on their part, may have felt that they could rely on the States Bloc in the federal legislature as a bulwark against the inroads of reckless democracy.

Whatever the motives, all hailed the Princes' participation with delight and the ship of federation set sail under universal applause and ovation and was expected to have a safe voyage. But when at the second Round Table Conference the details of the scheme had to be worked out, the ship entered a stormy sea and was tossed to and fro on the contending angry waves of the franchise question and was about to wreck on the rock of federal finance. Even the presence of Mahatma Gandhi could not inspire any settlement of the complicated problem. Several expert committees had to be formed to go into the difficult questions of federal finance, of franchise and of privileges and immunities enjoyed by various States. With the reports of these committees, further details of the scheme were discussed in a third Round Table Conference and the proposals of His Majesty's Government were embodied in the White Paper; which again was submitted to the consideration of the Joint Parliamentary Committee, on the recommendations of which the Government of India Bill has been drafted and submitted to Parliament to be passed into a Statute.

## II

### THE FEDERAL SCHEME EXAMINED





## II

### THE FEDERAL SCHEME EXAMINED

THE picture of the Indian Federation is now as complete as it could be; and the time for the States to decide finally if they are willing to join the scheme has arrived. The scheme of an All-India Federation has been discussed from the British Indian point of view by all schools of thought and is universally found wanting, inasmuch as the Bill does not aim at implementing the pledges so far made by responsible British statesmen. A consideration of the scheme from the standpoint of a Dominion constitution has now become irrelevant and cannot serve any useful purpose, as the Bill does not pretend to grant Dominion Status to India at the present juncture. What safeguards the States would have required under that contingency, for the protection of their sovereign rights; whether the States would or would not subscribe to a Dominion constitution without reserving for themselves the discretionary right of secession; and if such a right of secession were to become admissible, whether there would be any solidarity of the Federation with no permanence

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of adhesion to it of the States—all these considerations have now become equally irrelevant for the present purpose. It would therefore be more proper if the problem were approached from a different standpoint so far as it concerns the States. Since Parliament cannot directly legislate for the States, and since their relationship with the Crown is based on the treaties, *sanads* and engagements concluded between them and the Crown, it has been rightly conceded that their entry into the proposed federation is to be accomplished only through the indirect method of agreement individually negotiated with each State. Thus the States have the option to enter or remain outside the Federal Scheme as they think it best. In other words, the decision of each State under the circumstances would, therefore, naturally be prompted in accordance with the gain or loss that might flow from its entry into the projected scheme. But the question arises whether there are not provisions in the Bill that have a general application to a great number of States, either to induce or hinder their entry into the Federal Scheme. If so, what are they? How far do they apply to Mysore and are there any special facts which Mysore has to face in deciding the question? Should the States or British India regard this question exclusively from the standpoint of benefits to be derived, or should the interest of the whole of India be the ultimate ideal? It is on these lines the subject is approached in the following pages:

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### SAFEGUARDS

Many of the safeguards that the Princes had demanded have been provided for under the new Constitution. The claim that their relationship should be directly with the Crown instead of with the Government of India, as has been the case so far, is conceded and the recognition of that principle has necessitated the creation of two distinct authorities in India, though combined in the same person—the Governor-General as the head of the Federal Executive to look after the Federal area, and the Viceroy as representing the Crown in the exercise of Paramount authority in relation to the States. Outside the Federal sphere the Viceroy shall have powers of general and direct supervision over the States. The obligation of the Crown to protect the States in matters of Defence shall be fulfilled by the Governor-General in the exercise of his exclusive responsibility, i.e. the Reserved Department.

Notwithstanding these safeguards that have been conceived for the preservation of the rights secured to the States by treaty or otherwise, there might still exist circumstances in which the State Rights may be encroached upon either by the Federal Government or Provincial Governments even when they are acting within their constitutional rights. The proposal of a measure by the Federal Government in relation to a Federal subject or in relation to a subject not directly affecting the States at all, might, if pushed to its

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logical conclusion, offend the rights of the State which may not have selected that particular subject in its Instrument of Accession; or again a policy pursued by a Provincial Government might prejudicially affect the rights enjoyed by a neighbouring State. In such circumstances the Governor-General, or the Governor as the case may be, is under the obligation of maintaining the integrity of the treaty rights by exercising the powers of his special responsibility. The provision of such a safeguard on a statutory basis is of the utmost importance to the States. Hitherto, we have seen that whenever a conflict arose between the rights enjoyed by an Indian State and the interests of British India more often than not the decision was in favour of the British Indian interests.

It is most gratifying to the States now to find that a statutory obligation is imposed on the Governor and the Governor-General for the purpose of keeping intact the treaty rights enjoyed by the States. Sufficient as they may look so far as the Constitution goes, doubts are entertained by some, perhaps rightly, as to the due discharge of this obligation in actual practice by the Governor or Governor-General to its full extent. The powers of special responsibility are to be exercised in the field which falls within the purview of the ministers who are responsible to the legislatures. It must also be remembered it is only when the ministers are not convinced of the views of the Governor or the Governor-General that the powers of Special Responsibility are to be invoked, and the decision to resort to

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these powers rests solely with the Governor-General or the Governor, as against the opinion of the responsible ministers and the legislature. This might be a very serious and embarrassing situation both to the Governor-General and his ministers. The exercise of the powers of Special Responsibility might be viewed by the ministry as an infringement of their dignity and self-respect that might result in an eventual resignation. Then there would be none to form an alternative ministry, as no other persons would command the same confidence in the legislature. Under pressure such as might be too great for anybody to resist, is it likely that the Governor or the Governor-General, connected as he is more directly with British Indian interests, would exercise these powers even as against the wishes of his ministers? Time alone can reveal an answer to this question. But it is, however, earnestly hoped that wise and farsighted statesmanship would be able to avert such a deadlock, and a close consultation between the ministry and the Governor-General would work in such a way that after a time, as Sir Samuel Hoare hopes, these powers will fall into desuetude, not because the Governor-General would not exercise them but because he is not called upon to exercise them—as they have been carried into effect by the ministry itself.

There is another important point which the States must bear in mind in this connection, and that is that there is a tendency in all Federal constitutions for the Federal authority unconsciously to encroach upon the rights of its constituent States. The danger

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of such encroachments in the Indian Federation is greater to the States if they stand outside than when they are within the Federation. Their representatives in the Federal Legislature can raise an effective voice against such infringements. The constituent States can directly approach the Governor-General as the head of the Federal Executive for protection under the powers of his Special Responsibility, whereas a non-federated Indian State has to approach the Governor-General, if it has any right at all to do so, through the Viceroy.

### PARAMOUNTCY, STATES SOVEREIGNTY AND TREATY POSITION

The Princes have attached very great importance to their position as Sovereign Bodies and have required above all the inviolability of their position under the treaties to be adequately safeguarded in the Constitution Act itself. Before attempting to examine why such a demand was made by the Princes and how far it is fulfilled under the Bill, it is necessary to examine the nature and extent of the sovereignty of the Princes, as there are some British Indian politicians who still indulge in what may be called loose thinking and in publicly announcing that the Princes possess no vestige of sovereignty.

Without tracing the history of the political concept of sovereignty and how it underwent transformation at the hands of various political thinkers it is sufficient to

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note that 'Sovereignty' in the words of Sir Henry Maine 'is a term which in international law indicates a well-ascertained assemblage of separate powers or privileges. The rights which form part of the aggregate are specifically named by the publicists, who distinguish them as the right to make war and peace, the right to administer civil and criminal justice, the right to legislate and so forth. A sovereign who possesses the whole of this aggregate of rights is called an *independent* Sovereign; but there is not, nor has there ever been, anything in international law to prevent some of those rights being lodged with one possessor, and some with another. Sovereignty has always been regarded as divisible. It may perhaps be worth observing that, according to the more precise language of modern publicists, "sovereignty" is divisible but independence is not. . . . Accordingly there may be found in India every shade and variety of sovereignty, but there is only one independent sovereign, the British Government.'<sup>1</sup> In the light of this observation we find that the States have all the assemblage of sovereignty except those that they have surrendered to the Crown by virtue of their treaties, *sanads* and engagements.

It is in this restricted sense that the Princes refer to their sovereignty, i.e., the internal autonomy of the States, and this position has been accepted by British authorities; instances of recognition of such a

<sup>1</sup> vide his minute in the Kathiawar case, 1864.

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status are not wanting in official records. But it is no doubt true that the relationship which was originally founded on a pure contractual basis was gradually overlooked by the British authority and its steady encroachments upon the treaty rights under various pretexts and on various occasions have so affected the treaty position, that it is now possible for the British Government to assert that this relationship is not merely a contractual relationship, resting on treaties made more than a century ago, 'but a living and growing relationship shaped by circumstances and policies on a mixture of history, theory and modern fact.'<sup>1</sup> We therefore see at the present day that the Government of India is exercising powers over the States which are quite independent of the treaties. Sources of such powers are traced either to the inherent powers of the paramountcy or a body of usage and sufferance that have of late come into being. An examination as to how far this view can stand the test of criticism does not form part of the present purpose. Suffice it to say that the conclusions of the Butler Committee in regard to paramountcy are not convincing. It is easy to propound theories to justify any position and to shelve the question by epigrams like 'Paramountcy must remain Paramount.'

With regard to usage and sufferance it must be said that they cannot be a source of right, and unless there is a tacit agreement with full intent to

<sup>1</sup> vide *The Report of the Indian States Committee, 1928-29*, para 39, p. 23.



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make one underlying the usage, it has no binding force whatsoever. Sufferance and usage can only become a source of right when both the contracting parties are on an equal footing, and not 'when one party had no recourse but to submit to infringements with protests if it likes, and the other sure of its position can afford to ignore the protests and risk open rupture.' Thus it becomes clear that if British Power is interfering in the internal administration of the States, it is doing so not because the States have no internal sovereignty but because the British authority could afford to interfere with impunity.

Jealous as they are about the sacredness of their treaty position the Ruling Princes fear that the Federal Government might attempt to enlarge its powers in the future as the Government of India did in the past. With a view to secure safeguards against such possible encroachments, the Princes have been anxious to see that the future Constitution Act should contain safeguards for the inviolability of their treaty rights. During the discussions at the Joint Parliamentary Committee, suggestions were made, on behalf of the Indian States, to incorporate a clause analogous to Section 132 of the present Government of India Act, or at least a provision to the effect that the field of relationship as between the Crown and the States outside the Federal sphere should be beyond the scope of the Federal Constitution. But a careful consideration of the matters revealed that the disadvantages that would result by having this included within the

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Act, or even within the Instrument of Accession, might well be far greater than the advantages, inasmuch as that as soon as the questions of paramountcy were embodied in the constitution it would be hardly possible to prevent the Federal Courts from being called upon to interpret them. It was therefore agreed to leave the questions of paramountcy outside the Act.

The point had not ceased to raise misgivings in the minds of the Princes, but the recent statement made by the Secretary of State in the House of Commons that he would give an undertaking in a most solemn and formal manner that the treaties concluded with the Crown would be regarded as inviolable should be sufficient to reassure the Princes on the point. Besides they might as well expect, as promised by the Secretary of State in the Joint Parliamentary Committee,<sup>1</sup> that the Crown would perhaps make in a Royal Proclamation, a declaration with regard to the inviolability of the treaty terms. After all the chances of the treaty rights being impinged upon by the Federal Government are not so many as the exercise of unlimited and undefined powers under paramountcy.

### STATE REPRESENTATION IN THE FEDERATION

Under the Reforms, the Indian States shall have, if fully represented, 100 seats in the Upper Chamber

<sup>1</sup> Answer to Sir P. Pattani's Question, 7,734

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and 125 seats in the Lower Chamber. But in the early days of Federation it can hardly be expected that the Indian States will put forth their full strength in the Federal Legislature owing to the possible inaccession of certain States due to various causes. In such an event the White Paper had proposed that the vacancies resulting therefrom should remain unfilled. This would have meant a very great disadvantage to the acceding States in view of the fact that the Indian States even with their full strength form but a minority in the Federal Legislature and the States would have no effective voice in matters of legislation.. In order to obviate this difficulty the reforms provide a scheme of temporary weightage to the acceding States in addition to the condition that the inauguration of the Indian Federation should take place only after the States entitled to more than one-half of the seats allotted to the States in the Federal Upper Chamber have signified their intention to accede. If Federation is started with that required minimum number of States or with a number little above under the present Scheme, the acceding States shall be empowered to nominate, in all, an additional fifty per cent. of the seats allotted to the non-acceding States for a period of not more than twenty years; if however, within that period States that are entitled to 90 per cent. of the State seats were to accede, the concession of additional weightage is to cease. One can easily understand the rationale of the restriction of the additional weightage to 50 per

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cent. But why the framers of the Constitution thought that the concession of the additional weightage should become inoperative after twenty years is inexplicable. It was only with the idea of rendering the voting power of the Princes effective as against the swamping majority of British Indian votes that the principle of additional weightage was devised under the circumstances. But the lapse of twenty years, or for the matter of that any length of time, by itself could hardly make the voice of the States more effective than it is at present unless the States have their full numerical strength represented in the Federal Legislature.

Though the allocation of seats in the Federal Legislatures as between British Indian Provinces and the Indian States is settled on a fair basis, the allocation of seats among the States *inter se*, it must be said, is not free from injustice. The scheme of distribution of seats among the States is said to have been determined on the basis of population, in so far as the Lower Chamber is concerned. In the case of the Upper Chamber, the salute of guns which the States enjoy, their status and importance are the guiding factors. But an analysis of the table of seats that are allotted to each State would show that no principle has been strictly adhered to in either case.

With a view to secure separate representation for as many States as possible, the most populous big States have, under the scheme, been allotted fewer seats than they are entitled to under a strict application of popu-

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lation basis. And, moreover, generally in the case of group representation if more than half the number of States forming a particular group is to accede it shall have the privilege of sending in the full strength of the representation that is allotted to that group.<sup>1</sup> The combined effect of such a provision in favour of the smaller States has landed the bigger States in a most disadvantageous position. There is a great danger of the small States swamping the bigger States with their overwhelming majority. This is a grievance which makes the bigger States think twice before they can make up their minds to throw in their lot with the federal scheme.

It would be a serious dereliction of duty from the standpoint of the States subjects, if no mention were made of the method, prescribed in the Constitution Act, for the filling up of seats available to the States in the Federal Legislature. The reforms require that the representatives from the British Indian Provinces shall be elected members, though by means of an indirect election, while those that represent the Indian States would be the direct nominees of the Princes. The creation of a legislature under a divergent principle of this nature would necessarily involve constitutional anomalies in actual working, besides being indefensible from the national point of view.

<sup>1</sup> The scheme of filling up seats in the Federal Assembly in Division 16 of the Table varies slightly from the general plan, vide the Government of India Bill, First Schedule, Part II, para 11 and *Report of the Joint Parliamentary Committee*, Appendix III, para 5.

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Take, for instance, the dissolution of the Legislative Assembly by the Governor-General. The order of dissolution, in so far as it relates to the British Indian portion of the house, would have the ordinary effect. But in so far as it relates to the Indian States' portion of it, the Governor-General's order may not have the desired effect at all as there is nothing in the act to prevent the Princes from renominating the former representatives to the new Assembly. While the fixity of tenure of office of a State representative could thus be secured even against the action of the Governor-General, it is by no means easy to secure to the same extent the fixity of tenure of the representative's office as against his Prince's wishes, even though the Constitution provides for it. In fact it is most likely that the Princes, in view of this constitutional provision fixing the nominee's tenure of office to the full length of the life of the legislature, would choose only such persons to represent them in the Federal Legislature as would have no option but to resign their membership at a moment's notice from the Princes. This is certainly not a desirable feature nor is it a small matter that may be overlooked. If the Federal Legislature is expected to function satisfactorily, the one primary requirement would be the independence and freedom of vote enjoyed by the members. Yet it must be recognized at the same time, that any attempt to lay a condition on the Princes to send in only elected representatives would spoil all chances of Federation. In view of all these things

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the authors of the Constitution ought to have left it entirely to the discretion of the Princes, as was proposed in the White Paper, to decide the question in the manner they think it best. Advanced and constitutionally governed States like Mysore, where no conflict of interest between the Ruler and the ruled exists, would in all probability have thrown these seats open to election. After all no harm could be expected at the hands of the elected representatives either to British India or to the Indian States or Princes that they represent. Under a convention to be built up in future the States representatives, whether elected or nominated, are not expected to take part in the legislative measures which have an exclusive reference to British Indian affairs. Nor can the internal administration of any State be allowed to be discussed on the floor of the Federal Legislature. The rights of the States and of the Princes have been amply safeguarded by the powers that are vested in the Governor-General. Under these circumstances the Princes and the British authority should take their courage in both hands and make arrangements to introduce the principle of election at least in so far as it relates to the Lower House. This would enable them to avoid the unfair criticism that the States' representatives will form a bloc of their own analogous to that of an official bloc and hinder all progressive measures.

The plea for the introduction of the element of election instead of nomination in regard to the States'

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representation in the Federal Legislatures is strengthened by a suggestion of the Princes in their note accompanying their letter to His Excellency the Viceroy recently.<sup>1</sup> Commenting on Clause 26, 4 (b) they have opined that the lent officers of the Crown to the States should be disqualified from being sent to the Legislatures as the States' representatives. The reason assigned is that the States' representatives would probably then have the appearance of an official bloc. Is it too much to ask the Princes to push their own proposition to its logical conclusion, and approve of election rather than nomination?

Be it noted in this connection that the fear in the minds of some persons that the future development of political parties in India would take place on two distinctive lines, with British India on the one hand and with Indian States on the other, may not be well founded. Many individual States would find that their interests are much the same as those of the Provinces adjoining them. Moreover the questions that would be at issue in the Federal Legislature being All-India questions, the decision that would be arrived at would affect the different regions in different ways. The cleavage of opinion, therefore, would be based on regional interests rather than on the lines of British India as against Indian India.

Under these circumstances it is fair to visualise that the States' representatives could not in the nature

<sup>1</sup> *The Hindu*, 20th March, 1935.



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of things form a bloc of their own, voting according to instructions, as against British India.

#### THE INSTRUMENT OF ACCESSION

The option that the Constitution has accorded to each State in the matter of selecting subjects to be included in its Instrument of Accession is an enabling feature in the constitution from the standpoint of Indian States.<sup>1</sup> The historical antecedents of some States have left them in the enjoyment of certain rights which can approximately be classed as Federal Subjects. But a surrender of these rights in favour of the Federal Government would work a hardship to these States under the peculiar circumstances in which they are now situated. A rigid requirement to part with such rights incidental to accession to the Federal scheme would have precluded such States from entering the Federation.

With a view to overcome such difficulty, the Constitution recognizes these special cases as exceptions. States that are enjoying rights due either to the term of a treaty or as a special privilege, could, after making out a good case, get a reservation or exception in regard to that right or subject which actually falls within the standard list of federal subjects.

The existence of such exceptions and reservations of Federal subjects in favour of the States would result

<sup>1</sup> vide The Government of India Bill, Clause 6 (b)

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in a variation in the content of the Instrument of Accession of each State, though the Constitution contemplates standardizing not only the form but also the content of the Instrument of Accession. On account of this variation, the extent of Federal authority over each State would also vary in accordance with the terms of the Instrument of Accession. The Federal Legislature will thus have to exercise in the case of States only such jurisdiction as is agreed to in the Instrument of Accession, but will have in the case of Provinces full jurisdiction given to it under the constitution over all the Federal subjects. This would mean certain Federal laws would not be operative in the States that have not accepted them as Federal subjects in their Instrument of Accession. So far as subjects which are not accepted as Federal ones by a State are concerned, the representatives of that State cannot be expected to display the same sense of responsibility where a bill relating to that subject is on the anvil of the legislature, as other members would do to whom the bill in question might apply.

It was on account of this anomalous constitutional position, that the British Indian delegation urged in their joint memorandum the inclusion of a statutory provision in the Constitution Act itself to the effect: 'That in a division on a matter concerning solely a British India subject the States' representatives should not be entitled to vote; that the question whether a matter relates solely to a British India subject or not should be left to the decision of the Speaker of the

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House, which should be final; but that if a substantive vote of no confidence is proposed on a matter relating solely to a British-India subject, the States' representatives should be entitled to vote, since the decision might vitally affect the position of the Ministry formed on a basis of collective responsibility; and that if the Ministry is defeated on a subject of exclusively British-India interest, it should not necessarily resign.'<sup>1</sup>

One can easily understand the anxiety of the British Indians to see that the States' representatives should take no active part in matters which have an exclusive reference to British India to the same extent that the States would not like the British Indians to interfere in matters purely of States' concern. Let it be assured to the British Indians that the States have no desire to interfere in British Indian affairs and that they would indeed refrain from taking any part in them; nor is it profitable for them in any way to do so. But it must, however, be said that a provision to such an effect in the Act itself would debar them from taking part in affairs which, though apparently of purely British Indian concern, are in fact All-India questions. The provisions of a particular measure may interest only British India, yet if it is of sufficient importance for its rejection to involve the existence of the Government it thus becomes of direct interest to India as a whole and it is clear

<sup>1</sup> vide *Report of the Joint Committee on Indian Constitutional Reform*, Vol. I, Part 1, para 217.

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that the representatives of the States cannot but take part in such a critical question. The real solution of the difficulty lies as is contemplated under the Constitution in building up a convention that normally the States representatives should observe a self-denying ordinance in matters purely affecting British India.

### THE DISTRIBUTION OF LEGISLATIVE POWERS

It has been found that in Federal constitutions the distribution of legislative powers depends entirely on two considerations—‘the actual utility of large scale organization and the relative power of the spiritual jealousies for local or central government. People are ready to forgo proven material utilities for spiritual satisfactions and up to a point, which varies from country to country and time to time, refuse to be tempted by the economies possible from the technique of the age.’<sup>1</sup> This is why we come across great differences in the distribution of powers between the Central Government and the Governments of the component States, in the modern Federal constitutions. In each case the decision as to the extent of the powers to be vested in the Centre and the State Governments has depended mainly on the consideration of the actual political economic and social considerations of each country. In fact they were generally political decisions.

<sup>1</sup> Herman Finer, *The Theory and Practice of Modern Government*, Vol. I, p. 270.

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The authors of the present scheme were confronted with the same problems and the decision taken by them is also actuated by considerations of political expediency. Having been subjected to a unitary form of Government for more than a century, the British Indian Provinces perhaps may not have stoutly resisted the vesting of a large field of legislative powers in the Central Government; but the States would not go the same length. It is no doubt true that the Ruling Princes have realised the interdependence of British India and the Indian States and the consequent need for a compromise. But the love for particularism has prevailed as it did prevail in the early days of the German Confederation, and the States are not willing, at any rate at the present moment, to invest the Centre with more powers than are found necessary in order to secure an effective voice in the discussions and decisions of matters that are common to the whole of India. Accordingly it was found necessary to limit the extent of the legislative powers of the Federal Government, in so far as they relate to the States, to subjects mentioned in the Instrument of Accession of each State, and to leave the States in the enjoyment of residual powers of legislation as before. It must, however, be noted in this connection that it will be competent for the States to exercise their powers of legislation even in the Federal field provided that the legislation by the State is not inconsistent with the Federal laws.<sup>1</sup>

<sup>1</sup> vide The Government of India Bill, Clause 107, Sec. 3.

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As between the Central and Provincial Legislatures the scheme of the Bill has delimited their present powers, since legislative jurisdiction over subjects contained in the first and second list of the seventh schedule are exclusively vested in the Central and Provincial Legislatures respectively. In respect of subjects included in the third list both the Governments have a concurrent jurisdiction with a proviso that, in case of a conflict between a Federal law and Provincial law in the concurrent field, the former shall prevail.

With regard to the Residuary powers, the Muslim Section of the British Indian delegation following the examples of the constitution of the United States, the Australian Federation, the Swiss Confederacy and the German Reich, was in favour of lodging them in the legislatures of the constituent units of the Federation. But the Hindu Section wanted them to be with the Federation. But in view of this keen difference of opinion among the British Indian delegation the scheme of the Bill seeks to effect a compromise and accordingly the Governor-General is empowered to declare by a proclamation that subjects not mentioned in any of the lists be dealt with either by the Federal Legislature or by a Provincial Legislature as he deems fit in the circumstances of each case.<sup>1</sup>

<sup>1</sup> vide The Government of India Bill, Clause 104.

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### THE DISTRIBUTION OF ADMINISTRATIVE POWERS

If there are in the modern Federal constitutions, great variations in the distribution of legislative powers between the Central Government and the Governments of the component States, there have been deviations equally in the division of administrative powers also. Constitutions like that of the United States of America have assigned to the Federal Government administrative powers also to a very great extent.

On the other hand, constitutions like that of Germany have, to a certain extent, vested the Central Government with administrative authority but rely mostly on the co-operation of the administrative machinery of the component States for the due enforcement of the Federal laws. The distribution of administrative powers in the scheme of Indian Federation is of vital interest to the States as it means to them either an executive autonomy or interference in their internal affairs by a body of Federal officials acting independently of the machinery of the States. The scheme of the present Bill seems to follow the lines of the German Constitution and entrusts to a very great extent the execution of Federal laws to the Rulers of the States and to the Provincial administrations. Such a division of administrative powers raises very important problems for consideration. Experience gained from the working of constitutions modelled on this line has shown that whenever the Central Government is not granted

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executive functions commensurate with the legislative, it lacks the means and organs of enforcing its laws in the Federal area. The agency to which it entrusts this function may be either inefficient, inadequate or perhaps even hostile. So far no constitution, except that of Germany, has contemplated attaching a sanction for the due fulfilment of Federal obligations. Apart from this weakness, there are other serious drawbacks involved in such a distribution of powers. Even when the Central Government is entrusted with powers of control and supervision over the administrative authority of the federating units for securing the due enforcement of the Federal laws and the Governments of the latter act only as the agents of the former, conflicts between the two Governments are sure to arise, unless there is established an over-riding responsibility for the State Governments to carry out the Federal obligations. The situation becomes all the more serious if the Governments of the component units have been modelled on the lines of parliamentary responsibility. In that event the State Cabinets are under a dual responsibility; i.e. parliamentary responsibility to their own legislature and constitutional responsibility to the Federal Government. In cases of conflict the State Cabinet would be required to act inconsistently with the wishes of their own legislatures. This would indeed be a most serious situation.

Besides the foregoing drawbacks, to which the present Bill is no exception, the existence of a con-



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current legislative jurisdiction in the Central and Provincial Governments and the inclusion of the Indian States have further complicated the Indian scheme in this respect. An effective control and direction on the part of the Federal Government over the Provincial administration to enforce the Federal legislation, even in respect of the concurrent field, may tend to result in an eventual ousting of Provincial legislative jurisdiction in that field and in the curtailment of Provincial autonomy. But, at the same time, it is necessary to secure a uniformity in matters of the concurrent field which could be attained only through a uniform administration. On the other hand, the States do not seem to accept the authority of the Federal Government and that of the Governor-General, as distinguished from that of the Viceroy.

In order to avoid, or at least to minimise, these difficulties, and to make the Federal legislation effective in the Federal area, it is necessary that the agency to which Federal legislation shall be entrusted to be enforced should not only be efficient, sympathetic and adequate, but also should so exercise its authority as not to affect prejudicially any Federal subject. It should be competent for the Federal Government to inspect and satisfy itself if this agency is efficient and adequate for the purpose, and in case of inadequacy to subsidize the agency for additional staff; to issue to such agency such directions and instructions as are found necessary from time to

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time for the due fulfilment of Federal obligations. With a view to avoid a possible conflict between the Provincial Cabinets and the Federal Cabinet the former should be kept as far as possible relieved of the Federal responsibility and the Federal Government should be competent to a limited extent to give directions even in the concurrent field.

The scheme of the Bill purports to include these essentials and accordingly Clauses 122, 125 and 127 require that the Executive authority of the Provincial Governments and of the Federal States should so exercise their authority as not only to secure respect for the Federal laws that apply to their respective territories but also not to impede or prejudice the exercise of the Executive authority of the Federation. The Governor-General is empowered under the Constitution to give direction at his discretion to the Governments of the constituent units for the due enforcement of the Federal obligations.<sup>1</sup> These directions shall extend to matters contained in Part II of the third list of the schedule. The Governors of the Provinces shall be under a special responsibility to carry out such orders as are issued by the Governor-General. The Bill provides that in case of special staff maintained by the constituent State the latter should be subsidized by the Federation.<sup>2</sup>

The Conference of the Indian States' Ministers recently held at Bombay seems to be in favour of

<sup>1</sup> vide The Government of India Bill, Clauses 125 (3) and 127 (b)

<sup>2</sup> *ibid.*, Clause 123 (4)

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excluding the authority of the Governor-General in the matter of giving directions to the Rulers. If this were to be conceded, there will then exist no authority in the land, except probably that of the Viceroy, to enforce the Federal legislation in the Federated States.

But it should be remembered that the powers of the Viceroy in relation to the Indian States belong to the domain of paramountcy. It is possible that the Federal ministers might put pressure on him to use this power for enforcing the Federal legislation within the territories of the Federated States. But such a procedure would be unconstitutional, apart from being an extension of the scope of the paramount authority to interfere with the internal affairs of the State. Lord Peel rightly cautioned the Indian States delegation at the Joint Parliamentary Committee<sup>1</sup> that the line of demarcation between these two specific capacities, i.e. that of the Viceroy as representing the Crown and that of the Governor-General as the head of the Federal Executive, should not be allowed to be blurred, but be kept as clear and distinct as possible. If the object of the resolution of the Ministers' Conference merely aims at removing the ambiguities that might possibly lurk in the present drafting of the clauses in the Bill by limiting their scope of application to Federal matters only, there can be no objection whatsoever. But if the resolution intends to exclude the principle involved in the clause

<sup>1</sup> vide Question No. 12,900.

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it must be humbly submitted, with all due deference to the distinguished personages who had assembled at the conference, that there is no justification for the resolution.

### III

## FEDERAL FINANCE



### III

#### FEDERAL FINANCE

THE financial implications involved in the scheme of the Indian Reforms deserve very careful consideration at the hands of the future State-entrants. The difficulties in solving the financial problem of the new Indian Federation are no doubt many. Though it is a well-recognized principle of sound Federal finance that all the federating units should contribute on an equal and uniform basis to the Federal Government, the framing of a general financial scheme of that kind is not possible, as it involves on the part of some States a sacrifice of some of their sovereign rights and privileges in the field of taxation. The federating State units occupying and possessing different degrees of political status and privileges, have developed policies of taxation which are strictly assignable to the field of Federal taxation and which if continued by the States might impinge on the Federal resources. In the absence of adequate resources and the possibility of developing an alternative system of taxation, the States find it very difficult to give up their present rights to taxation in favour of the Federation,

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and an immediate transfer would involve the difficult question of adjustment. Lastly, while it is to be admitted that on principle, the residuary powers of taxation should be lodged with the Federation, the States, circumstanced as they are, would be ill-advised if they consent to this. It is therefore necessary to evolve a scheme which while not impairing the financial stability and internal sovereignty of the federating States would place the Federal Government on a fairly secure basis and arm it with adequate resources to meet all emergencies.

But before examining the financial proposals under the Government of India Bill in the light of the foregoing observations, it is necessary to review briefly the claims at present preferred by the Indian States against the Government of India in the matter of financial adjustment and the history of the burdens that are, under the Bill, sought to be fastened on the Federal Government, such as for instance the public debt of India and the central civil pension charges; because we should then be in a proper position to assess the fairness or otherwise of the proposals outlined in the Bill. It would also perhaps, be possible to repel the suggestion, not infrequently made, that the Indian States are out to gain as much as possible, while giving up as little as they can in the whole transaction. But a correct appraisal of the financial implication of the Federal scheme, with the necessary historical background, will reveal clearly that the Indian Princes, if they join the Federation, will be



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second to none in the sacrifice they will be making and in their desire to advance the permanent ends of our Motherland.

### THE PUBLIC DEBT OF INDIA

The public debt of India amounts at the present day to about 1,173 crores of rupees. The departmental memorandum of the Government of India, furnished to the Round Table Conference as a basis for discussion, had divided it into two parts, viz., the productive debt, i.e. the debt covered by assets, amounting to 1,001 crores, and the unproductive debt amounting to 172 crores of rupees. It is to be conceded that the productive debt of the country with its assets should be taken over by the Federal Government. With regard to the unproductive debt rightly called a dead-weight debt *prima-facie*, the liability for it cannot be fastened on the States. This is a debt upon which interest has to be paid without any corresponding earnings. It was incurred under conditions in which on no grounds could the liabilities be laid on the States.

As a matter of fact, a considerable portion of the public debt of India has been regarded by eminent statesmen as not being a legitimate burden even on the Government of India, inasmuch as it had been built up by the selfish policy of the British people in debiting many items of expenditure to Indian resources, for which the Government of India could

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in no sense be responsible. Without entering into minute details and making an attempt to trace the history of this debt, the origin of which dates back to the days of the East India Company, it is sufficient for the purpose of this work to refer only to the important circumstances under which it has been incurred or occasioned. Since 1783, the East India Company, commercial as it was in its aims and objects, went on appropriating the whole of the surplus yield under the revenue administration for purposes of distribution among its shareholders, without setting apart a portion for reducing the deficits that had occurred on the territorial side. The expenses incurred in connection with the external wars waged by the Company beyond the geographical limits of India for safeguarding British interests were charged to the revenues of India. Even the cost of having suppressed the Indian Mutiny formed part of this debt.<sup>1</sup>

Even after India was transferred to the Crown things did not get better. The old policy of charging the expenditure on wars waged for British interests to the revenues of India was continued as before. Several other causes such as financial mismanagements, losses on account of exchange, expenses of civil and military administration of British possessions beyond India for safeguarding imperial interests and, lastly, the Great

<sup>1</sup> vide *The Report of the Select Committee of the Congress on the Financial Obligations between Great Britain and India*, Vol. I, pp. 7-20.

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War have contributed greatly to the swelling up of this debt. The policy adopted by the British Government in regard to the question of the public debt of India was so selfish that eminent persons in Great Britain have condemned it in no uncertain manner. It will be interesting to quote some of the opinions in this connection.

As regards the burden imposed upon India by the Company's wars, Sir George Wingate has said:

Most of our Asiatic wars with countries beyond the limits of our Empire have been carried on by means of the military and monetary resources of the Government of India, though the objects of these wars were, in some instances, purely British and in others but remotely connected with the interests of India. They were undertaken by the Government of India in obedience to instructions received from the British Ministries of the time acting through the Presidents of the Board of Control; and for all consequences they have involved the British nation is clearly responsible. The Afghan War was one of the most notable of these, and it is now well understood that this war was undertaken by the British Government without consulting the Court of Directors, and in opposition to their views. It was, in fact, a purely British war, but notwithstanding this, and in defiance of a solemn expression of unanimous opinion on the part of the Court of Directors, and of a resolution of the Court of Proprietors of the East India Company that the whole cost of the war should not be thrown upon the Indian finances, the ministry required this to be done. By this injustice, ten millions were added to the debt of India. The late Persian War was proclaimed by the British Ministry in pursuance of a policy with which India had no real concern; but the war not the less was carried on by the troops and

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resources of India, and one-half only of the total cost was subsequently settled to be borne by the revenues of this country. India, in fact, has been required to furnish men and means for carrying on all our Asiatic wars and has never, in any instance, been paid a full equivalent for the assistance thus rendered, which furnishes irrefragable proof of the one-sided and selfish character of our Indian policy.<sup>1</sup>

Referring to this item John Bright said in the House of Commons:

Last year I referred to the enormous expenses of the Afghan War the real burden of which ought to be thrown on the taxation of the people of England, because it was recommended by the English Cabinet for objects supposed to be English.<sup>2</sup>

Regarding the cost of the Mutiny Sir George Wingate has said:

If ever there was an occasion which called for great sacrifices on the part of the British people, it was certainly this, when the brightest jewel in the British Crown was in danger of being torn from our grasp; but even in this crisis of our history, the selfish traditions of our Indian policy prevailed, and with unparalleled meanness, we have sought to transfer the entire cost of a perilous struggle to uphold our own empire to the over-burdened finances of India.<sup>3</sup>

In the crisis of the Indian Mutiny, then, and with the Indian finances reduced to an almost desperate condition, Great Britain has not only required India to pay for the whole of the extra regiments sent to that country, from

<sup>1</sup> *Our Financial Relations with India*, pp. 17-19.

<sup>2</sup> *Dutt's History of India*, p. 217.

<sup>3</sup> *Our Financial Relations with India*, p. 13.

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the date of their leaving these shores, but has demanded back the money disbursed on account of these regiments for the last six months of their service in this country, previous to sailing for India. There may be good reasons for the adoption of a course that reminds one of Brennus throwing his sword into the scale, which determined the ransom of the vanquished Romans; but as we had the services of the men, and as their pay for the period in question was spent in supporting the industrious classes of this Kingdom, and could have been of no benefit to India, we are laid under a moral obligation to explain the principles of justice, or of honest dealing, by which we have been guided in throwing this additional heavy charge upon the overburdened finances of India.

The cost of transporting British troops to India, is also charged upon the Indian revenues; but as this outlay is expended upon the British shipowners and is made for the maintenance of the British authority in India, it would clearly be reasonable and fair that the charge, as in the case of troops sent to any of our other foreign dependencies, should be borne by the British Exchequer.<sup>1</sup>

In reply to the letter of the War Office of 14th April, 1872, the Secretary of State for India has said:

The extraordinary case of the great mutiny of 1857-58 is the only case which gives even plausibility to the War Office representation; in that case, altogether unprecedented in this history of British India, the Imperial Government was compelled, under the imminent risk of losing its Empire in the East, to make one of those efforts which are at times inseparable from Imperial powers and Imperial obligations. It must be remembered however, that, if similar exertions had been called for by war in any other part of Her Majesty's dominions not only must the same

<sup>1</sup> *Our Financial Relations with India*, pp. 15-16.

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effort have been made, but the burden of it must necessarily have been borne, in greater part, at least, by the Imperial Government; but, in regard to the Indian Mutiny, no part of the cost of suppressing it was allowed to fall on the Imperial Exchequer; the whole of it was or is now being defrayed by the Indian taxpayer.<sup>1</sup>

In regard to the question of deciding if the ordinary cost of the Abyssinian War should be charged to India, Lord Salisbury has said :

Having regard to the future, I do not like India to be looked upon as an English Barrack in the Oriental Seas from which we may draw any number of troops without paying for them. It is bad for England and it is always bad for us, not to have that check upon the temptation to engage in wars which can only be controlled by the necessity of paying for them.

Sir Charles Trevelyan in his evidence before the Fawcett Committee said :

The Abyssinian War arose out of the Imperial sentiment affecting the whole British Empire and in a much greater degree, in my opinion, our European and American relation than our Indian relation. . . . In fact, the people of India know nothing about Abyssinia. They consider it as one of the regions of the world they know nothing about. . . . India had nothing to do with the proceedings which brought about the Abyssinian War and was not much concerned with the result.

To a further question put to him by the Commission, he answered :

[Question 1600] In fact, India was in no way more

<sup>1</sup> *Indian Expenditure Commission, 1895, Vol. II, p. 292.*

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concerned with our expeditions to Abyssinia than were Australia and Canada, and that the only reason why we did not make similar demand from Australia and Canada to help to pay the expenses of that War, was that we knew perfectly well that they would indignantly scout such a proposal; they would not listen to it for a moment, would they? Well, I am bound as an honest man to say that I see no real difference. India had nothing to do with the proceedings which brought about the Abyssinian War and was not much concerned with the result.<sup>1</sup>

Perak Expedition: The Right. Hon. the Earl of Northbrooke in his evidence before the Welby Commission has said:

It was a very small one; but in this Perak case I cannot conceive anyone doubting that India has been hardly treated. Here was an expedition beyond the frontier of India, and for which, in order that any portion of the Indian revenues should be applied, it is by statute necessary that there should be an address to the Crown from both the Houses of Parliament. I happened to be the Governor-General at the time, and I protested against this charge being put upon India. Not only was no notice taken of the protest made by the Government of India but not even were the statutory addresses from both Houses moved, so that the law was broken, and the charge so made upon India has never been repaid. It has remained charged upon India from that time to this, contrary to the law and contrary to the protest of the Government of India. That is the case of Perak; that is the second one I have got to deal with and I think this case is perfectly clear.<sup>2</sup>

<sup>1</sup> *Parliamentary Committee on East India Expenditures, 1876, Vol. III, p. 151.*

<sup>2</sup> *Indian Expenditure Commission, 1895, Vol. III, p. 20, Q. 14,121.*

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The policy that Lord Northbrooke was instructed to pursue in connection with the Second Afghan War may be given in his own words:

I came to India and yet before leaving England for India, I had frequent interviews with Lord Salisbury, the then Indian Secretary, and I came out specially instructed to treat the Indian Frontier question as an indivisible part of the great Imperial question, mainly depending for its solution upon the general policy of Her Majesty's Government.<sup>1</sup>

In the course of the Parliamentary debate as to the payment of the cost of the Second Afghan War, Mr. Fawcett observed:

What was our policy towards self-governed colonies and towards India not self-governed? In the self-governed colony of Cape we had a war for which we were not responsible. Who was to pay for it? It would cost the English people something like five millions. In India, there was a war for which the Indian people were not responsible—a war which grew out of our own policy and actions in Europe—and we are going to make the Indian people, who were not self-governed and who were not represented, pay every sixpence of the cost.<sup>2</sup>

Mr. Gladstone supporting Mr. Fawcett said:

. . . This Afghan war has been distinctly recognized as partaking the character of an Imperial War . . . but I think not merely a small sum like that (referring to the contribution of five million pounds) but what my Right

<sup>1</sup> Quoted in *Indian Expenditure Commission*, 1895, Vol. III, p. 467, from *Hansard*, Vol. CCLI, p. 923.

<sup>2</sup> *Indian Expenditure Commission*, 1895, Vol. III, p. 467. Quoted from *Hansard*, Vol. CCLI, p. 926.



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Honourable friend, the Chancellor of the Exchequer, would call a solid and substantial sum ought to be borne by this country at the very least.<sup>1</sup>

Sir Dinshaw Wachha in his evidence before the Welby Commission regarding the Burma War observed:

As to Upper Burma, the entire cost of the military expedition and the subsequent cost of the administration, should be wholly refunded by England to India, and the province separated from India and made into a Crown Colony as was suggested by the Congress. The Occupation was made out at the suggestion of the English merchants in Rangoon and Mandalay. Indians never demanded the annexation and it is unfair to India that for the promotion of the interests of English capitalists and extension of the British Empire any charges be paid out of the revenues of India.<sup>2</sup>

The late Mr. Gokhale in his evidence before the Welby Commission regarding the Burma War said:

Upper Burma lies beyond the Indian frontier and we have had no interest in its conquest and annexations, except as a province to be held and administered as an imperial trust. The conquest was effected in furtherance of Imperial Policy and the Commercial Interests of the Empire and no special Indian interest was ever here at stake.<sup>3</sup>

As regards the injustice of charging the costs, in connection with the Soukim Expedition, to India, the

<sup>1</sup> *Indian Expenditure Commission*, Vol. III, p. 467. Quoted from *Hansard*, Vol. CCLI, p. 935.

<sup>2</sup> *Indian Expenditure Commission*, Vol. III, p. 204, Q. 17,821.

<sup>3</sup> *Indian Expenditure Commission*, 1895, Vol. III, p. 243.

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Government of India protested in the following terms:

In order to strengthen Soukim and to set free Egyptian troops for employment on the Nile, we have been asked to provide for a garrison composed of troops from the Native army in India. We cannot perceive any Indian interests, however remote, which are involved in carrying on the policy above described. It cannot be alleged that safety of the Suez Canal is involved and the taxpayers of India, who have to bear the ordinary costs of the Indian troops proceeding to Soukim, will hardly comprehend the reasons for taxing them for troops which are not serving in India in order to maintain order on the Egyptian frontier to reconquer part of an Egyptian Province or to assist the Italian forces. . . .

In these circumstances, we feel it our duty, in the interests of the country of which the administration is entrusted to us, to protest once more in the strongest terms against the policy which burdens the Indian Revenues with the expenditure connected with services in which India has no interest; which is unjust to India, because it is applied to the payment of the Indian troops lent to England, a different principle from that which England imposes when English troops are lent to India; and which is inexpedient, because it exposes our Government to attacks to which there is no adequate answer.<sup>1</sup>

The foregoing quotations clearly show that there is considerable justification for the view that the unproductive portion of the public debt of India should not be a charge on the Government of India. While this is so, there can obviously be no justification

<sup>1</sup> Quoted by C. N. Vakil, *Financial Development in Modern India*, p. 131.

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whatsoever for federalizing the whole of it and fastening the liability on the Indian States. This is why, it must be submitted, the departmental memorandum of the Government of India, referred to before, had proposed that the unproductive debt should be a central charge as distinguished from a Federal charge, i.e. the service of the unproductive debt should entirely fall upon British India.

At the Round Table Conference there was a good deal of controversy over this question, a controversy which illustrates the truth that 'in the pursuit of political good, men seek to receive the utmost and sacrifice the least.'<sup>1</sup> The British and the British Indian delegation exhibited their powers of extraordinary resourcefulness in finding arguments to shift this responsibility to the Indian States. The argument that even this part of the debt of the Government of India (the unproductive debt) was secured on the revenues of British India, including customs in which the States claim a share, and as customs are going to be federalised they should be taken along with their corresponding liability, i.e. the unproductive debt, is untenable, inasmuch as these debts were incurred by the Government of India on its own responsibility and the States had no part in it. Moreover, so far as the share of the Indian States in the customs revenue is concerned, the Government of India must be considered to have been in the position of a trustee

<sup>1</sup> vide Herman Finer, *The Theory and Practice of Modern Government*, Vol. I, p. 324.

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and if it has raised a debt on the security of the customs revenue a part of which belongs to the States, it does not bind the States in any manner whatsoever. If, however, at the time of raising the loan the States were getting a share of the customs revenue then they could not have denied the liability. The fact of the matter is that the States were never consulted, and if the Government of India has borrowed money on a security which really did not belong to them and which did not legally exist, it does not affect the States at all.

The other argument adduced by the Peel Committee is that the Indian States would be profited by the surplus profits from the assets of the productive debt which is going to be federalized. They have urged that the service of Railways itself is yielding a surplus profit of  $5\frac{1}{2}$  crores of rupees, the capitalized value of which might amount to as much as 100 crores. The answer to this is obvious: that for a very long period of time British India has been appropriating a large sum of money which is in all conscience due to Indian States, i.e. a share in the profits of currency, tariffs, posts and telegraphs and railways, and some of these monies for aught we know might have gone to the creation of some productive assets. Moreover, the railways have of late become a losing concern. From the year 1933, as is evidenced by the Railway Budget, the revenue showed colossal deficits and there has been a raid on the railway reserves to pay the agreed quota to the general revenue. A reserve fund which

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was built up in five years has been almost depleted in the short period of three years.

Another argument advanced for federalizing this debt is that 'the federal authority will presumably succeed to the whole of the buildings and the public works of all kinds which are at present the property of the Central Government. The replacement value of these is of course an enormous sum, though there are no exact data at hand for evaluating it.'<sup>1</sup> Hence the Indian States according to them, cannot take the assets without shouldering the responsibilities for the unproductive debt. This argument clearly will not bear close scrutiny. We have to consider with what equipment the Federal Government ought to be started. All the buildings may not be needed. We may not approve of the expenditure of 19 crores of rupees for the development of Bombay and about 18 crores for new Delhi. After all they were financed from funds in which the States had a legitimate share. To sum up, the attitude of the States is that unless it can be proved to the hilt that the debt incurred is of such a nature that the States may be legitimately asked to shoulder a part of it they ought not to be burdened with it. Unfortunately, the proposals under the Bill support the contrary view.

<sup>1</sup> vide *Report of the Federal Finance Sub-Committee, 1931*, Para 6. (Peel Committee Report.)

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### THE CIVIL PENSION CHARGES

Equally inequitable is the proposal to federalise the liability in regard to the Civil Pensions the estimates of which come up to about 80 to 90 lakhs of rupees to be paid out of India annually. This is another instance in which the States are called upon to bear a burden in which they have no concern. Neither in practice nor in theory could this liability be justifiable. The Percy Committee also admitted that this charge is strictly speaking a central liability, inasmuch as five-sixths of it is in respect of service in the Provinces. Yet it has been federalized on the grounds firstly that it is a small matter and secondly that 'though the liability should theoretically be apportioned between the various provinces, still such an allocation would however involve an expenditure of labour out of all proportion to theoretical improvement in the presentation of the true position.'<sup>1</sup>

Why so much stress is laid on this question of civil pensions is just to show that while the case of an admittedly exclusive British Indian liability has been treated so leniently and fastened on to the States, the case of cash contributions which are yet a smaller sum, and equally admitted to be an unjust levy from the States has not received the same lenient and generous consideration. There could not have been much difficulty in framing a Federal budget

<sup>1</sup> *Report of the Federal Finance Committee, 1932.* p. 15. (Percy Committee Report.)

ignoring altogether the subsidy which is a 'historical remnant of a vanished past.'

In fact the expenditure proposed under the Federal budget admits of drastic cuts. The military expenditure is colossal inasmuch as India spends 40 per cent. of her total revenues while England spends only about 18 per cent. In spite of gradual reduction from the year 1931, the military budget of the Government of India today is higher by 60 per cent than it was in the year 1913-14, just on the eve of the Great War. Even in the field of civil expenditure great savings could be secured. Many of the recommendations of the Inchcape Committee for abolishing certain posts have still not been given effect to; on the other hand, some posts that had been abolished under the recommendation of that Committee have since been restored. The abolition of the posts of the Divisional Commissioners, a steady Indianization of the All-India services, and a quick decision to fix the pay of the future recruits to those services on the Indian basis would result in great savings to the Federal Government.

After all the sum of 74 lakhs of rupees, representing the cash contributions paid to the British Exchequer is a mere bagatelle compared with the resources at the disposal of the Federal Government and when the inequity of the impost is admitted it should not have been impossible for wise statesmanship to remit it immediately. By so doing the British Government would not only have redressed a wrong that was long

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overdue but also have placed the constituent units in the position of initial parity with each other. It is needless to state that the equitable distribution of burdens is the *sine qua non* of a scheme of Federal finance.

#### THE INDIRECT CONTRIBUTIONS

At present the Indian States have been annually making payment of enormous sums of money by way of indirect contributions to the Government of India under various heads such as Customs Revenue, Coinage, Currency and Exchange, Salt and Excise, etc. The Directorate of the Chamber's Special Organization has roughly estimated the States' share under these heads as amounting to not less than ten crores of rupees a year. Under customs revenue itself even accepting the lowest calculation of the Nind Committee the share of the Indian States to the Central Revenue comes up to six crores of rupees annually.

It is an accepted principle of public finance that the taxes should be collected, in the main, from the subjects of the State which has levied them and the subjects who are under the obligation to pay the taxes so levied should have not only a corresponding right to a benefit from the revenues so collected but also an effective voice in the matter of fixing the levy itself. But in so far as the customs duty levied by the Government of India is concerned, this principle has no operative force in relation to the Indian States.



For, though the Government of India has constitutionally no right to tax the Indian States, the customs duty is so levied and so collected that the subjects of the Indian States cannot escape payment of this enforced levy. We know the elementary principle of taxation—that the incidence of indirect taxes is, in most cases, ultimately borne by the consumers. The Government of India levies, at British Indian ports, duties on imported and exported goods, the proceeds of which accrue to the central revenues. Since the people of the States also consume imported goods and some of them participate in the export trade of the country they contribute to the customs revenue of the Government of India in proportion to their share in the import and export trade of the country.

During the period when the Government of India was pursuing the policy of Free Trade the duties were at a low level, and the share contributed by the people of the States was meagre, and even negligible. Even as late as 1915 the total customs revenue came up to  $9\frac{1}{2}$  crores of rupees. But after the close of the Great War the policy of the Government of India in regard to customs revenue underwent radical change; the old policy of Free Trade yielded place to that of 'Discriminating Protection.' Especially after the war with the new scale of duties the yield under this head enormously increased and in the year 1930 it rose to 51 crores of rupees.

In spite of the fact that the States have been contri-

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buting nearly six crores of rupees a year to the Central Exchequer, they have had no corresponding benefit out of this revenue. On the contrary they have been the victims of the working of British Indian economic policies. Under the existing conditions, they have to pay an enhanced price for the goods they consume; they have not been allowed to have a say in regulating this policy. The State Governments could not participate even in the benefits of the protectionist policy in regard to industrial development in their own territories. Even the most superficial study of the problem of customs revenue would reveal the abject helplessness of the State Governments, as well as their subjects, against the working of the British Indian Tariff Policy.

In regard to the claim of a share in the customs revenue for the States it may be safely stated that its validity and justness have been generally admitted. The opponents of the claim are few and far between; and eminent jurists like Sir P. S. Sivaswamy Iyer<sup>1</sup> who ask the States to curse their fate for their landlocked position and bless British India in its endeavour fully to exploit its geographic advantages are fortunately not many. Let not therefore the merits of the claim be discussed, which stands self-justified. It will be enough if it is mentioned that even the Butler Committee has recognized the equity of the case. In Paragraph 82 of their

<sup>1</sup> Vide his book, *Indian Constitutional Problems*, pp. 234, 235.

report they say, 'We consider however that the States have a strong claim to some relief. So long as the maritime customs were on a low level (about five per cent *ad valorem*) there was no substantial grievance. If the British Government imposed duties at the ports the States imposed duties on their frontiers.<sup>1</sup> Each treated the other as the other treated it. But in the year 1931-32, the maritime customs were greatly raised under many heads and later on a policy of discriminating protection was adopted in British India, with the result that the revenue from maritime customs has risen from some five to fifty crores of rupees. The States were not consulted in regard to this policy. The majority of them derive no benefit from protection and their subjects have to pay the enhanced price on imported goods—in effect a double customs duty, their taxable capacity being reduced to the extent of the maritime duty. This in our opinion is a real and substantial grievance which calls for remedy.'

The States' claim for a share in other items of indirect contributions which have been hitherto made to the Government of India by the States is by no means less important than that under the customs revenue. The Government of India is making a considerable amount of profit under coinage and currency by means of exchange transactions and interest on securities in the paper currency reserves. The total income shown under the head of Mint and Currency

<sup>1</sup> Mysore is an exception to this.

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in the Budget of the Government of India for the year 1933-34 is 1.11 crores and under salt it is 7.60 crores. The States feel that they are entitled to a share in the profits under Mint and Currency inasmuch as some of them receive considerable items of revenue in sterling in London and that they have suffered heavy losses through the fixing of the rupee at eighteen pence.

It will not be possible to bring within the scope of this pamphlet a detailed enquiry as to how far the economic well-being of the States has been vitally affected by the monetary and currency policy of the Government of India and to what compensation the States are entitled in consequence of their salt monopoly. Nor would it be profitable at the present juncture to examine the merits of the claim preferred by the States under each head of revenue, as the controversy regarding these claims is soon destined to become a matter of merely historic and academic interest. For in the coming Federation, customs, coinage, currency, exchange, salt, excise, posts and telegraphs and railways will be exclusively Federal subjects; and the claim of the Federating States for a share under these heads of revenue will automatically lapse as pointed out in the memorandum on Federal Finance prepared by the Finance Department of the Government of India.

The Joint Select Committee and the Secretary of State have heaved sighs of relief at the welcome disappearance of an admittedly uncomfortable problem.

But as far as the States are concerned the legalization of a long-standing anomaly is at best only a consolation. If the States believe that in surrendering their claims for a share under these heads of central revenue, they are substantially discharging their Federal obligation no one can find fault with them. For their share in the customs revenue is of no inconsiderable magnitude; and their commitment to a perpetual surrender of this source of revenue is no small sacrifice at the Federal altar. For example, it is estimated that Mysore alone contributes nearly a crore of rupees under customs revenue alone, while their total indirect payment, according to the memorandum furnished by the Mysore Government to the Davidson Committee would come up to more than 150 lakhs of rupees a year. And by every standard of political and economic equity it must be admitted that this huge sum would more than set-off Mysore's obligation towards the Federal Government. The Butler Committee said 'that if the States are admitted to a share of the customs revenue of British India, British India may legitimately claim that the States should bear their full share of imperial burdens on the well-established principle that those who share receipts should also share expenditure.' Even accepting this wider basis of reckoning, for the sake of argument, the Government of Mysore has well pointed out that it has been contributing more than its proportionate burden inasmuch as its contribution comes up to 150 lakhs while

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its share of imperial burdens, even according to the Nind Committee, is only 130 lakhs a year. What is true of Mysore is mostly true of a great many Indian States. And if they complain that the financial provisions of the Government of India Bill make a large inroad on the financial resources of the States, they do so not out of any niggardliness but because of a just sense of unfair treatment, particularly with regard to their direct contributions.

### THE IMPERIAL SERVICE TROOPS<sup>1</sup>

Besides the foregoing contributions that the States are indirectly making to the Government of India there is another item of expenditure of the Indian States which should also be deemed as being incurred towards the cost of national defence. Almost all the Indian States are maintaining, in addition to the State Troops proper, military forces well known as the Imperial Service Troops. These forces are meant more for safeguarding the imperial interests than for quelling internal disorders within the States, which are very rare. And even if internal disorders were to occur it must be remembered that the British Government is in duty bound required to secure protection to the States from disturbances, internal as well as external.

Yet the States are obliged to maintain these troops; besides under powers vested in them in virtue of engagements subsequently made with most States the

<sup>1</sup> Now known as The Indian State Forces.

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Government of India has been insisting on a certain standard of efficiency. Questions of enlistment, organization, equipment and the drill of troops are decided in accordance with the instructions issued by the Governor-General in Council. The maintenance of these troops is roughly estimated to cost the States five crores of rupees, besides another five crores for the State Troops proper. The States naturally feel that the military budget of the Government of India has been reduced to that extent in the past. Since the defence of India is an exclusive function of the Federal Government and the States cannot dispense with their liability even in future, would it be unreasonable if the States should ask for an adjustment in the future financial scheme, especially when the Federating Provinces have no similar obligation?

To sum up: from the inquiry so far made it becomes clear that by accepting a liability for service of a share in the pre-federation debt and of certain pre-federation pension charges, by dropping a claim in the indirect contributions the States have been making to the Government of India and, lastly, by continuing to make a contribution in kind to defence to which there is no parallel on the side of the British Indian Provinces, the Indian States justifiably feel that they are paying more than they ought to under the equitable principle that contributions from the units should be on an equal basis.

Realising, however, the fiscal needs of an Imperial

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Government which is exposed to serious political and financial exigencies and with a view to secure the two essential requirements, i.e. elasticity and certainty of revenue without which no Federal Government could fulfil its obligations with ease and dignity, the States agreed even to bear a Federal excise duty on sugar, matches and petrol. The yield under this head will reach no inconsiderable magnitude: Mysore alone will pay under this head between nine and ten lakhs of rupees per annum.

It is no doubt true that under Clause 137 of the Bill, a distribution of a part or the whole of this revenue among the federating units is contemplated. But it must, however, be remembered that this is only a remote possibility. Because even in the case of income-tax which has a priority in this regard, the Joint Parliamentary Committee says, 'that for some time to come, the centre is unlikely to be able to do more than find the funds necessary for the deficit provinces and that an early distribution of any substantial part of the taxes on income is improbable.' Moreover there is another point which should not be overlooked in this connection. Clause 147 of the Bill purports to effect as a set-off against any refund to the Federated States under this head the value of the immunities or privileges enjoyed by the States. The principle of set-off which was originally conceived by the Davidson Committee to be applied to the question of remitting the subsidy has now been under the Bill extended to be applied to any tax or duty, the



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proceeds of which are to be distributed among the Federated States. This is one of the several instances in which the Bill seems to have departed from the position agreed to by the Round Table Conference and the Joint Parliamentary Committee.

### DIRECT TAXATION

If, in addition to the indirect taxes mentioned above, the States are called upon to bear further direct taxation they naturally feel that the distribution of Federal burdens between the British Indian Provinces and the States will become too inequitable, particularly when a considerable portion of the Federal Revenue is to be earmarked under the proposals for subventions to the deficit British Indian Provinces. In order to attain at least an approximate equi-distribution of burdens among the federating units, Sir Akbar Hydari, on behalf of the States-Delegation made a statement to the Joint Parliamentary Committee on 26th July, 1933 to the following effect: 'If (as had emerged from the figures in the Hailey Memorandum) at the time of the passing of the Constitution Act, the British Indian budget, central as well as provincial, as a whole including the budgets of British Indian Provinces was a balanced one the Indian States could immediately enter the Federation on the basis of the *status quo* as then existing, so far as finance was concerned. Secondly, that the White Paper proposals concerned may be accepted provided that (a) the

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prescribed percentage to be retained by the Federation under paragraph 139 of the proposals is not less than fifty per cent.; and (b) that it is understood that the White Paper proposals in paragraph 139 empowers the Governor-General in his discretion to suspend beyond ten years reductions of assignments to provinces, if he is of opinion that the continuance of the assignment would endanger the financial stability of the Federation. Thirdly, if at any time even during the period of the first ten years the financial position becomes such that the federal expenditure cannot be met from sources of revenue permissible to the Federal Government after all possible economies had been effected, and the resources of indirect taxation open to the Federation are exhausted and the return of income-tax to the provinces suspended, a state of emergency will be held to have come into being when all Federal units will make contributions to the Federation on an equitable and prescribed basis.'

To put it in other words, the attitude of the States in regard to the question of direct taxation, amounted to this: that for the first ten years of the Federation the States would not consent to any levy of the nature of a direct tax, and after that period they would however be willing to transfer their corporation tax<sup>1</sup> or an equivalent sum to the Federal revenue provided that not less than 50 per cent. of the income-tax derived from the British Indian Provinces had not only been

<sup>1</sup> Under this head Mysore will be paying between seven and eight lakhs of rupees per annum.

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retained by the Federation exclusively for Federal expenditure but also that such a policy in regard to the income-tax shall become a permanent feature of the Federal resources; that a Federal surcharge may be extended to the States ten years after the inauguration of the Federation only as an emergent measure, and if within the period of the first ten years an emergency were to arise, in spite of the entire yield of the income-tax having been retained by the Federation and all possible economies effected, the States would undertake to contribute proportionately along with the British Indian Provinces.

These terms it must be admitted are reasonable and fair, and the basis of discussion and agreement were proceeded with on these lines in all the Round Table Conferences and the Joint Parliamentary Committee. In fact the balance of distribution of burdens, it could well be shown, even on this basis, would still be in favour of the Provinces. The Joint Parliamentary Committee seems to corroborate this view. For it says, 'it seems to us both unnecessary and undesirable to attempt any accurate balances of these factors. . . . It will be wiser to base the division upon the financial and economic needs of the Federation and the units.'

Knowing fully that their voting strength in the Federal legislature is not of much avail, the States insisted on the incorporation, within the Act itself, of these conditions on which alone they would submit themselves to direct taxation by the Federal govern-

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ment. But instead of such inclusion, we find that the Bill merely refers to the *quantum* of income-tax to be retained by the Federation in such terms as 'a prescribed percentage' which might be far less than was agreed to by the States and allows the Federal surcharges to become operative even during normal times. It is no wonder that the States feel disappointed over this serious omission and declare that the proposals of the Bill are a deviation from the previously accepted basis.

### CASH CONTRIBUTIONS

The foregoing discussion of the subject of Federal Finance has made it clear that the Indian States would be accepting liabilities for certain items of Federal revenue which they would not be strictly liable to assume under a fair scheme of Federal finance. But, as Sir Samuel Hoare has observed, it is not possible to evolve a perfectly satisfactory scheme under the peculiar conditions of the Indian problem, a scheme which judged by strict canons of political and financial theory would meet all requirements of equity and justice. While the States are alive to this particular difficulty in the matter of financial adjustment and are prepared to make all legitimate sacrifices in bringing about an All-India Federation there is one item of the financial proposals to which they cannot help taking a very strong exception: that is the subsidy.

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The case for the abolition of this objectionable feudal levy is unchallengeable, irrespective of the ensuing constitutional change in the Government of India. The real origin and purpose of the subsidy was the price for protection given to the States by the East India Company at a time when India was fairly torn asunder by internecine warfare. As could be shown from the history of the subsidy of a great many States, it was intended to be continued only so long as there was external and internal danger. The reasons for its levy having ceased to exist the impost should, in all fairness, have been automatically abolished. The age of militarism and of soldier statesmen is a thing of the past; still the subsidy has not disappeared. Force and not justice, it must humbly be submitted, has been the basis of the continuance of the subsidy.

Under a Federal scheme, it certainly has no place. Committee after committee has admitted its inequity, but has failed to recommend its immediate total abolition. The Federal Finance Sub-Committee (the Peel Committee) in paragraph 18 says, 'We think that there is, generally speaking, no place for contributions of a feudal nature under the new Federal constitution; and only the probability of a lack of Federal resources at the outset prevents our recommending their immediate total abolition. We definitely propose that they should be wiped out *pari passu* with the provincial contributions discussed in para 16. Meanwhile there seem to us to be certain cases in which real hardship

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is inflicted by the relative magnitude of the burden of the cash contributions; and we suggest that it might be possible, without excessive loss being thrown on the Federal Government, to remit at once that part of any contribution which is in excess of five per cent. of the total revenues of the States.'

The Davidson Committee to which the question of Subsidy was particularly entrusted to be dealt with has recognized that the tributes 'are arbitrary and unequal in their incidence on particular States,' that 'many States pay no tributes at all and the distinctions that exist between one State and another in this respect, as well as in respect of the amount of tribute paid, are largely the result of a series of historical accidents,' that 'as between the members of a federation, such payments by some units for the benefit of all have no logical basis' and 'that the States now paying tributes can and do justly urge that no unit on entry into federation should remain burdened by these exceptional contributions, in addition to the contributions which it makes through the incidence of indirect taxation common to all alike.' Having said all this the Committee made a halting recommendation which amounts to this, viz. that 'that portion of the subsidy paid by a State which is in excess of five per cent. of the annual revenues of the State should immediately be abolished: and the remission of the balance be spread over a period not exceeding twenty years. If within that period the contributions in

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the form of taxes on income from the Provinces to the Federal Government were to cease, the subsidy should disappear *pari passu* with them and at the same time the value of any existing immunity or privilege enjoyed by the State should be made a set-off against such remission.

The States regarded the foregoing recommendations as inadequate, unsatisfactory and disappointing. It is not right to connect the cash contributions of the States with those of the Provinces. As rightly pointed out by His Highness the Nawab of Bhopal in the Federal Structure Committee: 'The States' contributions cannot be treated on the same footing as contributions made by the Provinces, if only because the States have shouldered their burden for over a century, whereas the burdens borne by the Provinces are comparatively quite recent.' Secondly, the conception of the principle of set-off is in direct contravention of the treaty terms. If the above recommendations were unsatisfactory, the position under the Bill has become far worse. For the authors of the Bill have refrained from embodying in the Bill the recommendations of the Davidson Committee in regard to the immediate abolition of the excess amount over and above five per cent. of the total revenues of the States. Though a period of twenty years has been prescribed for the eventual total abolition of the subsidy—of course less the value of any existing immunity or privilege enjoyed by any State—yet the process of gradual reduction during the

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*interim* period in accordance with the recommendation of the Davidson Committee may not be possible, as the programme of reduction is to take effect simultaneously with that of distributing the assigned portion of the taxes on income among the British Indian Provinces. It has already been shown that the Federation in its early days may not find sufficient sums of money for this purpose. Moreover, the Governor-General is empowered under Clause 136 (2) proviso under (b) 145 (3) (a) of the Bill even to suspend the programme of distribution of income-tax if the financial stability of the Federation so requires.

#### MYSORE AND THE SUBSIDY

The retention of the subsidy even as a temporary source of revenue for the Federal Government would mean a crushing burden to Mysore, apart from being a stigma of inferiority. No State in India has been paying such a large sum of money to the British Government for so many years as Mysore has done. Out of the total sum of 74 lakhs of rupees that is being levied as tributes from about two hundred States, the share of Mysore alone comes up to 24½ lakhs a year. It should also be remembered that during a long period of thirty-two years, i.e. 1896 to 1928, Mysore had to pay an additional sum of 10½ lakhs per annum with very little justification.

At the time when the ruling Hindu dynasty was restored to the throne of Mysore after the fall of



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Seringapatam, and the death of Tippu Sultan, in 1799, it was agreed that the Maharaja should pay an annual sum of seven lakhs of Star Pagodas ( $24\frac{1}{2}$  lakhs of rupees) in consideration of the protection accorded to him by the Company and the military forces maintained by them for the defence and security of Mysore; and it was further agreed that the Maharaja should contribute towards the additional expenses incurred by the Company in times of war such sum as might appear to the Governor-General to bear a just and reasonable proportion to the net revenue of the State.

But by the year 1807, it was found that it would be more convenient if the second stipulation which was dependent on contingencies of possible wars, was rendered more specific and definite. Accordingly in 1809, in lieu of an indefinite liability to render monetary help in times of war, the Mysore Durbar was kept under the obligation of maintaining 4,000 horse to be available to accompany and serve with the Company's army.

But in view of the peaceful conditions that subsequently prevailed, especially during the direct administration of Mysore by the British (1831-81) the maintenance of 3,000 horse was considered unnecessary and was therefore given up. But at the time of the Rendition, even though there was no need to maintain the horse contingent, the subsidy was fixed at a sum including the full cost of maintaining 4,000 horse, overlooking the fact that the basis of the original

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stipulation for cash payment was applicable only in times of war. Thus Mysore was forced to pay from 1896 to 1928 a sum of 35 lakhs a year. The Instrument of Transfer (1881) had, however, recognized that Mysore was absolved of all other obligations to maintain troops. Yet subsequent events show that she is forced to provide for the Imperial Service Troops, besides her own troops proper, at a cost of not less than 20 lakhs a year.

An important point to notice and one which is apt to be overlooked in connection with the Mysore subsidy, is that it was never contemplated by either party that the subsidy should constitute a permanent or indispensable feature of their relationship. It was a mere *quid pro quo* for the service rendered in times of war and to be continued pending the *effectual establishment* of the Maharaja's rule. That it was subject to an implied time limit could be clearly seen from Article 9 of the Treaty of 1799 which recites that it was 'Expedient for the effectual establishment of the Maharaja Mysore Krishnaraja in the Government of Mysore, that His Highness should be assisted with a suitable subsidiary force.' Both these conditions for which the subsidy was originally stipulated having been fulfilled long ago it was fair that the subsidy should have been automatically remitted.

Another point which is of equal importance in this connection is that the benefits to be derived under the subsidiary alliance were by no means all on one side. In fact the history of the Deccan in the early part

of the nineteenth century reveals that the East India Company consolidated its position and established peace in South India with the co-operation of Mysore.

The help rendered by Mysore during the military operations of the Company between 1799–1809 was so valuable and immense that even the Marquis of Wellesley recorded, after the Maratha war 'that the Government of Mysore must be considered to have afforded to the British Government and its Allies in the late war, a degree of aid, greatly exceeding that which the British Government and its Allies could have derived from a mere pecuniary contribution on the part of the Raja of Mysore, equal in amount to the extra charges actually incurred by the Raja of Mysore on the occasion of the late war.'<sup>1</sup>

The following extract sums up the result of the subsidiary arrangement, in the words of his brother, the great Duke of Wellington:

Experience has proved the wisdom of the arrangement which was first made of the Government of Mysore; and I am convinced that under no other arrangement would it have been possible for the British Government to derive such advantage from the country which you have governed, as I have enjoyed in the various difficulties with which we have contended since your authority was established.<sup>2</sup>

Another extract indicates the serious nature of those difficulties:

<sup>1</sup> Quoted in the *Mysore Gazetteer*, Vol. II, p. 2790.

<sup>2</sup> *ibid.*, p. 2747.

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The manner in which the expedition against Dhoondiah Waugh has been conducted and terminated, has effectually removed the immediate danger which menaced the possessions of the Company and of their allies and dependents in the peninsula of India, and the impression made by our success against this insurgent cannot fail to contribute in an eminent degree to the permanent establishment of tranquillity in our recent conquests and on the whole line of our new frontier.

Another aspect of the policy is presented by the following extract of a letter from Colonel Arthur Wellesley:<sup>1</sup>

I recommend it to you not to put the Company upon the Maharatha Frontier. It is impossible to expect to alter the nature of the Maharathas, they will plunder their neighbours, be they ever so powerful. . . . It will be better to put one of the powers in dependence upon the Company on the frontier, who, if plundered, are accustomed to it, know how to bear it and to retaliate, which we do not.<sup>2</sup>

The foregoing review of the question makes it evident that a consideration of our past services alone should have been sufficient to influence the British authorities to remit this unjust levy. But we are forced to learn the painful truth of the observation of Sir Austen Chamberlain that 'Gratitude is rare in this world.'

Equality of status being a fundamental feature of the Federation, the subsidy which is no other than a stigma of inferiority can have no place in the proposed constitution. On behalf of his loving and devoted

<sup>1</sup> Later the Duke of Wellington.

<sup>2</sup> Quoted in *Guedalla, The Duke*, p. 90.

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subjects, His Highness the Maharaja wrote in a letter to Lord Irwin as follows:

‘The removal of this anachronism ought not to be longer delayed, if Federation is to be a success, and the one way to ensure such success is to give freely as an act of grace this measure of justice long withheld. I need hardly say that we are all perfectly willing to pay our share of Imperial burdens on whatever basis it may be assessed. What those of us who pay the tributes are anxious to secure is that we should be put in a position in discussions of Federation with the other States and Provinces as equal partners and not lying under the present stigma of inferiority.’ Thanks to the indefatigable energy of Sir Mirza M. Ismail, who made a strong appeal both in the meetings of the Round Table Conferences and the Joint Parliamentary Committee, the question of the abolition of the subsidy has been brought to the forefront. But the outcome of it all is, we are merely told by the Government of India that it will be impossible for them to take action in pursuance of the recommendations of the Davidson Committee, even in regard to the immediate abolition of the excess amount of over and above five per cent of the total revenues of the States, until they are in a position to remove emergency charges, to restore full pay to their employees, and to settle satisfactorily the question of special assistance to the deficit provinces.<sup>1</sup>

<sup>1</sup> Referred to by Sir Mirza M. Ismail in the Joint Parliamentary Committee. Question No. 8,202.

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Lastly, the unkindest cut of all is that of regarding the postal concession that is being enjoyed by the State of Mysore as an immunity to be set off against the cash contribution of the State. To estimate a claim against Mysore on this account at such a high level as 5,57,700 rupees a year is nothing short of adding insult to injury. When it has been admitted by the Davidson Committee that the maintenance of an independent postal system does not constitute an 'Immunity,' how a direct exchange of that right for a lesser privilege can be construed as an immunity which is subjected to the principle of set-off passes one's comprehension. It was with a view to pave the way for the postal unity which was sought, that Mysore, after repeated requests from the Government of India, reluctantly got herself incorporated in the British Indian Postal system in the year 1888, on the explicit understanding that the whole of official correspondence would be carried within the State limits free of cost to the Durbar. 'The privilege that has been acquired is merely the substitute of the right that was surrendered for a specific consideration and one fails to see why the one is to be treated as a fiscal immunity to be charged for and the other only as a sentimental privilege without any cash value.' Should Mysore be penalised now merely because she complied with the request of the Government of India in the past?

No State in India has stood by the Federal idea more steadfastly than that of Mysore. The subjects of Mysore yield to none in their desire to contribute

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their share to the development of an All-India polity and to achieve higher political status, and they are prepared to make all legitimate sacrifices for the attainment of this goal. But they feel it most humiliating to enter the Federation bearing a stigma of inferiority, a brand of shame, a relic of serfdom on their backs. Their only hope of deliverance from this obnoxious levy now lies in His Majesty's gracious act to remit it as contemplated in the Bill.<sup>1</sup> Are they destined to be disappointed in this last chance?

<sup>1</sup> Government of India Bill, Clause 144.





## IV

## CONCLUSION



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THE examination of the Reform proposals in the foregoing chapters discloses certain defects which are of no small significance to the Indian States. On financial, constitutional and even moral grounds the scheme leaves much to be desired. To the constitutional purist and academician, it may seem to be a sorry scheme replete with anomalies and unhealthy compromises. To the impatient idealist who would like to scrap the whole lot and remould it after his heart, the present scheme may be the very apotheosis of imperfection. But it would be unwise to put the proposals to the test of strict political theory and weigh them meticulously as in a balance; nor would it be right to judge them from the point of view of mere profit and loss. The ultimate value of the Indian Federation is to be judged not so much by its structure and form as by its success or failure in making India happier, more self-reliant and progressive. The task of framing a scheme for the Indian Government, to adapt John Morley's expressive words, 'needs more than spiritual enthusiasm and it is not enough to have "very

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scriptural notions" for the reform of stubborn earthy things'<sup>1</sup>—particularly of the Indian variety. It must not, however, be thought that the writer of this pamphlet taboos all idealism. Far from doing so, he thinks with Malcolm Rorty that 'the most precious possession of a nation is the idealism of its people—and the greatest loss a nation can suffer is the waste of this idealism in vain plans and vain efforts based on false and erroneous premises. Our problem is not to plan the [political or] social millennium, but, with Emerson, to "accept the Universe," and to do, from time to time, the reasonably good thing that can be done, rather than to struggle vainly for an impossible perfection.'<sup>2</sup>

The question is whether, taking all the circumstances into consideration—the peculiar conditions of the Indian problem, its extraordinary complexity, the varied and conflicting interests and anachronistic ideas to be reconciled—the proposed scheme of reforms with all its short-comings is worthy of being accepted by the Indian States? In other words, should the Indian States join the Federation? That is the issue to be answered, and the only rational answer is in the affirmative. There can be no denying the fact that on a comprehensive view of the whole situation the Federal scheme is a step forward in the path of India's political advance. It helps to link up the destinies of

<sup>1</sup> *Oliver Cromwell*, p. 359.

<sup>2</sup> Vide Malcolm C. Rorty's essay on 'The Economics of Capitalism' in *Bolshevism, Fascism and Capitalism*, p. 118.

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the two parts of India which are apparently distinct but really one.

India can boast of a certain cultural unity, but only England has given her political unity. We have had to pay the price for this in a certain loss of self-respect and in economic impoverishment of our country. On the other hand, we have gained through England a new sense of political self-respect, a broader vision, and, most of all, the advantages of peace and religious tolerance. Federation must not despoil India of these advantages, rather it should bring to her a new wave of economic prosperity, as well as a new status in the international world so that our helotage in South Africa and Kenya, in Australia and Canada may be a thing of the past.

Through England we have come to appreciate to the full the advantages of political unity, and the doctrine of paramountcy has on the whole tended to bring the Indian States within the orbit of a united India. Circumstances have changed, and the political power is passing steadily, if slowly, to British Indians. It would not be reasonable on the part of British Indians to expect that Indian Princes, who have accepted the paramountcy of England for obvious historical reasons, could be suddenly coerced or even persuaded to accept them as the heirs of England. But if the advantages of political unity are not to be lost in the future, the States should throw in their lot with the Federation. Without their participation the future Government of India in Indian hands will

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find itself weak, for the States may prove a drag on the progress of India as a whole.

That the Indian Princes on the whole have declared themselves for the Federation speaks well for their political acumen and for their patriotism. They may lose their splendid isolation through Federation, but they will have the pride of playing their part in the larger field of India as a whole. Their wealth, their knowledge, their traditions, their capacity to rule as the fathers of their people will all emerge on a wider field. Many of them have already given ample proof of their ability to hold their own and inspire their subjects' loyalty even in the midst of democratic influences. Those who have not risen to the expected level will find it expedient to change their ways. Their more or less personal representation in the Federal chambers will indeed be an anomaly, but such anomalies will have to be put up with for the sake of India as a whole. An ideal constitution is a difficulty anywhere. In India it is an impossibility. Such anomalies need not matter, provided we have reasonable men to work the Constitution.

A spirit of co-operation must be evinced by all concerned in the working of the new Constitution. It is also essential that the extraordinary powers vested in the executive which, to use the expression of an eminent politician, 'seem intended to frustrate in detail what cannot be denied on principle' ought not to be exercised so as to impede the best interests of India.

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A good deal has been said in the British Indian press about the assumed unwillingness of Princes to enter the Federation. But not enough has been said about the truculent and unreasonable attitude of some eminent British Indians. They show a lamentable lack of historical perspective when they expect the Princes to enter Federation with a blind faith in the character of the new Government. They show an all-too-human weakness when they bluntly expect the Indian States to shoulder the burden of the public debts of British India without taking into consideration whether the States in any way benefited through those debts. It would be a great pity if on the very threshold of a new experiment the Indian States should be made to feel that they can hope to get justice only from the British Government. Sometimes a show of sympathy for the well-being of the subjects in Indian States is made by British Indians. If they are sincere in this, they ought to see that the financial implications of Federation do not weigh heavily on the subjects of the States.

British Indians ought not to do anything that would scare away the Princes from the Federation; for an incomplete Federation would spell a weakened India. British Indians are not themselves politically or racially so united as to make a complete success of the future government of India a foregone conclusion. There will have to be a good deal of give and take, a good deal of super-provincial-and-communal patriotism before India can make a good job of her political

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freedom. Let them not complicate their difficulties by looking upon the States with suspicious eyes and trying to create a new party feeling. Their statesmanship will be seen when they inspire trust in all communities and when they so mould the trend of politics as to bring the Princes into a more democratic relationship with their subjects and a more brotherly relationship with the leaders of Indian thought in British India.

India has suffered through disunity in the past. She has had peace imposed on her for a century by the steel-frame of British rule. Now at last a chance is vouchsafed to her to have a political unity ready made; she has only to maintain it and show to the world that she can be one and at peace within her frontiers. India has suffered in the past, as the clash of endless nationalities in the continent of Europe makes Europe suffer today, enveloped in distrust and pining for peace on the basis of bayonets and battlements. India is just about the size of Europe minus Russia. She is in a position to set an example as to how a huge continent can have one government. In this great experiment India cannot achieve success unless the States join the Federation. That will see the fruition of that providential connection between England and India on which the Indian political leaders of the last century used to dwell with such fondness.